

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

DANIEL S. LEVIE,)
vs.)
Plaintiff,)
vs.)
RON WARD, ET AL.,)
Defendants.)
NO. CIV-05-1419-HE

ORDER

Plaintiff Daniel Levie, a *pro se* state prisoner, brings this action pursuant to 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. § 2000cc-1 et seq., alleging violations of his federal constitutional rights. Defendant Danny Atchley has filed a motion to dismiss/motion for summary judgment. Defendants Ron Ward, Debbie Morton, Lenora Jordan, and Phillip Brandon (the “ODOC Defendants”) have separately filed a motion to dismiss/motion for summary judgment. Plaintiff has responded to these motions and has filed a motion for restraining order/temporary injunction and a motion for sanctions. Pursuant to 28 U.S.C. § 636(b)(1)(B), this matter was referred to Magistrate Judge Valerie K. Couch, who recommended that both of plaintiff’s motions be denied, that Defendant Atchley’s motion and the ODOC Defendants’ motion be granted in part and denied in part, and that the claims against the Unnamed Wiccan Representative be dismissed without prejudice.

Defendant Atchley and the ODOC Defendants have failed to object to the Report and Recommendation and, therefore, have waived their right to appellate review of the factual

and legal issues it addressed. United States v. One Parcel of Real Property, 73 F.3d 1057, 1059-60 (10th Cir. 1996). *See* 28 U.S.C. § 636(b)(1); LCvR 72.1. Plaintiff has filed an objection but has only objected to that portion of the Report and Recommendation that recommends dismissal without prejudice of Unnamed Wiccan Representative to the Oklahoma Department of Corrections Interfaith Council. Plaintiff has therefore waived his right to review of the remainder of the factual and legal issues addressed by the Report and Recommendation. *See* One Parcel of Real Property, 73 F.3d at 1059-60.

Plaintiff objects to the dismissal of Unnamed Wiccan Representative, asserting that service on this party has been made but no entry of appearance on behalf of this party has been filed. Plaintiff attaches a “Notice of Completion of Process” that he filed May 1, 2006. Appended to this document is a return of service showing that service was completed by certified mail to “OK Dept of Corrections, Interfaith Council, Wiccan Representative.” As plaintiff filed his complaint over a year and a half ago and has not yet identified the Unnamed Wiccan Representative nor effectively served him or her, the court concurs with the Magistrate Judge’s conclusion that the claims against Unnamed Wiccan Representative should be dismissed without prejudice, pursuant to Fed.R.Civ.P. 4(m).

Accordingly, the Report and Recommendation [Doc. #60] is **ADOPTED**.

Defendant Atchley’s motion to dismiss/motion for summary judgment [Doc. #20] and the ODOC Defendants’ motion to dismiss/motion for summary judgment [Doc. #41] are **GRANTED IN PART** and **DENIED IN PART** as follows: The plaintiff’s claim contained

in Count Three of his complaint which challenges OP-030112's specifications governing other religious accouterments is **DISMISSED** without prejudice. The plaintiff's claims pursuant to § 1983 for monetary damages against defendants in their official capacities are **DISMISSED** with prejudice. Summary judgment is entered in favor of Defendant Atchley and the ODOC Defendants on the plaintiff's remaining First Amendment claims contained in Counts One through Three. Summary judgment is entered in favor of the ODOC Defendants as to the plaintiff's RLUIPA claims contained in Counts One through Three which challenge in-cell possession of oils, incense, and herbs. The ODOC Defendants' motion is **DENIED** as to plaintiff's remaining RLUIPA claims contained in Counts One through Three which challenge the restriction on the types of religious oils plaintiff is allowed to purchase. Defendant Atchley's motion is **DENIED** as to the RLUIPA claims asserted against him.

The claims against Unnamed Wiccan Representative are **DISMISSED** without prejudice.

Plaintiff's motion for restraining order/temporary injunction [Doc. #51] and his motion for sanctions [Doc. #56] are **DENIED**.

IT IS SO ORDERED.

Dated this 27th day of September, 2007.


JOE HEATON
UNITED STATES DISTRICT JUDGE

